

1995 Challenge to the Growth Management Act

Initiative No. 164 to the Legislature:

In 1995, Initiative 164, the Private Property Regulatory Fairness Act, was submitted to the Legislature by Dan Wood of Hoquiam, a property-rights advocate, that challenged some of the basic premises of the Growth Management Act. In the summer of 1994, Dan Wood and the Umbrella Coalition, a group of wise use and property rights advocates, began gathering signatures for the initiative. But, as the deadline to turn in signatures approached, they fell short of the required amount to qualify the initiative. The real estate, building and timber industries then stepped in and raised \$200,000 for professional signature-gatherers, who then gathered more than enough signatures to certify the initiative to the Legislature.

According to *The Seattle Times*, the initiative would, “Require governments to do a ‘full analysis of the total economic impact’ of any proposed land-use regulation at least 30 days prior to adoption. It would require that when a government adopts a land-use restriction, it be one ‘that has the least possible impact on private property and still accomplishes the necessary public purpose.’ It would consider private property to have been ‘taken for general public use’ if regulations stop development to protect wetlands, fish or wildlife habitat or buffer zones, unless the regulation is needed to stop or prevent a ‘public nuisance.’ It would require governments to pay the amount of property value lost through regulations. If the government doesn’t pay, it cannot restrict use of the land. And it would prohibit governments from making property owners pay for any studies, maps or reports needed in making land-use decisions.” (Postman, David and Jonathan Martin, “Senate Joins Revolt Over Property Rights,” *The Seattle Times*, April 19, 1995)

The Legislature has three choices in dealing with initiatives: it can adopt the initiative as law; or do nothing and send it to the voters on the November ballot; or place it on the ballot with a proposed alternative.

Initiative 164 passed the House of Representatives on February 15, 1995 by a vote of 69-yeas, 27-nays, 2-excused. It then passed the Senate on April 18, 1995 by a vote of 28-yeas, 20-nays, 1-excused. The initiative was then identified as Chapter 98, Laws of 1995.

Text of Initiative 164: Chapter 98, Laws of 1995

Ch. 97	WASHINGTON LAWS, 1995	WASHINGTON LAWS, 1995	Ch. 98
	<p>(3) It is unlawful for any person to violate this section.</p> <p>(4) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.</p> <p>Passed the Senate March 9, 1995. Passed the House April 6, 1995. Approved by the Governor April 18, 1995. Filed in Office of Secretary of State April 18, 1995.</p>		
	<p>CHAPTER 98 [Initiative 164] PRIVATE PROPERTY REGULATORY FAIRNESS ACT AN ACT Relating to regulation of private property; [and] adding a new chapter to Title 64 RCW. Be it enacted by the People of the State of Washington:</p> <p>NEW SECTION. Sec. 1. This act is intended to provide remedies to property owners in addition to any constitutional rights under the state and/or federal constitutions and is not intended to restrict or replace any constitutional rights.</p> <p>NEW SECTION. Sec. 2. This act shall be known as the private property regulatory fairness act.</p> <p>NEW SECTION. Sec. 3. A regulation of private property or restraint of land use by a governmental entity is prohibited unless a statement containing a full analysis of the total economic impact in private property of such regulation or restraint is prepared by the entity and made available to the public at least thirty days prior to adoption of the regulation or imposition of the restraint. Such statement shall identify the manner in which the proposed action will substantially advance the purpose of protecting public health and safety against identified public health or safety risks created by the use of private property, and analyze the economic impact of all reasonable alternatives to the regulation or restraint. Should the governmental entity choose to adopt a proposed regulation or restraint on the use private property, the governmental entity shall adopt the regulation or restraint that has the least possible impact on private property and still accomplishes the necessary public purpose.</p> <p>NEW SECTION. Sec. 4. (1) A portion or parcel of private property shall be considered to have been taken for general public use when:</p>	<p>(a) a governmental entity regulates or imposes a restraint of land use on such portion or parcel of property for public benefit including wetlands, fish or wildlife habitat, buffer zone, or other public benefit designations; and (b) no public nuisance will be created absent the regulation; and (2) When private property is taken for general public use, the regulating agency or jurisdiction shall pay full compensation of reduction in value to the owner, or the use of the land by the owner may not be restricted because of the regulation or restraint. The jurisdiction may not require waiving this compensation as a condition of approval of use or another permit, nor as a condition for subdivision of land. (3) Compensation must be paid to the owner of a private property within three months of the adoption of a regulation or restraint which results in a taking for general public use. (4) A governmental entity may not deflate the value of property by suggesting or threatening a designation to avoid full compensation to the owner. (5) A governmental entity that places restrictions on the use of public or private property which deprive a landowner of access to his or her property must also provide alternative access to the property at the governmental entity’s expense, or purchase the inaccessible property. (6) The assessor shall adjust property valuation for tax purposes and notify the owner of the new tax valuation, which must be reflected and identified in the next tax assessment notice. (7) The state is responsible for the compensation liability of other governmental entities for any action which restricts the use of property when such action is mandated by state law or any state agency. (8) Claims for compensation as a result of a taking of private property under this act must be brought within the time period specified in RCW 4.16.020.</p> <p>NEW SECTION. Sec. 6. No governmental entity may require any private property owner to provide or pay for any studies, maps, plans, or reports used in decisions to consider restricting the use of private property for public use.</p> <p>NEW SECTION. Sec. 7. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.</p> <p>(1) "Full compensation" means the reduction in the fair market value of the portion or parcel of property taken for general public use which is attributable to the regulation or restraint. Such reduction shall be measured as of the date of adoption of the regulation or imposition of restraint on the use of private property.</p> <p>(2) "Governmental entity" means Washington state, state agencies, agencies and commissions funded fully or partially by the state, counties, cities, and other political subdivisions.</p> <p>(3) "Private property" means - (a) land; (b) any interest in land or improvements thereon;</p>	
	[360]	[361]	

(c) any proprietary water right;

(d) Any crops, forest products, or resources capable of being harvested or extracted that is owned by a non-governmental entity and is protected by either the Fifth or Fourteenth Amendments to the U.S. Constitution or the Washington State Constitution.

(4) "Restraint of land use" means any action, requirement, or restriction by a governmental entity, other than actions to prevent or abate public nuisances, that limits the use or development of private property.

NEW SECTION. Sec. 8. This act may be enforced in Superior Court against any governmental entity which fails to comply with the provisions of this act by any owner of property subject to the jurisdiction of such entity. Any prevailing plaintiff is entitled to recover the costs of litigation, including reasonable attorney's fees.

NEW SECTION. Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. Sections 1 through 8 of this act shall constitute a new chapter in Title 64 RCW.

Passed the House February 15, 1995.

Passed the Senate April 18, 1995.

Originally filed in Office of Secretary of State August 18, 1994.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 99

[Engrossed Substitute House Bill 1452]

METROPOLITAN PARK DISTRICTS—PROPERTY TAX—PROTECTION OF PORTION OF TAXES FROM PRORATIONING BY BALLOT PROPOSITION

AN ACT Relating to allowing voters to approve ballot propositions protecting a portion of metropolitan park district property taxes from prorationing; amending RCW 84.52.010 and 84.52.043; and adding a new section to chapter 84.52 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 84.52 RCW to read as follows:

A metropolitan park district with a population of one hundred fifty thousand or more may submit a ballot proposition to voters of the district authorizing the protection of the district's tax levy from prorationing under RCW 84.52.010(2) by imposing all or any portion of the district's twenty-five cent per thousand dollars of assessed valuation tax levy outside of the five dollar and ninety cent per thousand dollar of assessed valuation limitation established under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(2)(c), for taxes imposed in any year on or before the first day of

Referendum No. 48 to the People:

Even before the Legislature passed Initiative 164, groups such as the League of Women Voters, Common Cause, environmentalists and some government officials began organizing and raising money to challenge the initiative if the Legislature approved it.

After the law was passed by the Legislature, Lucy Steers, of the League of Women Voters and spokeswoman for the “No on Initiative 164” coalition, filed Referendum 48 on April 19, 1995. Sufficient signatures were collected to place the measure on the ballot at the general election on November 7, 1995, giving voters an opportunity to decide if this act should remain law.

Voters rejected Referendum 48 by a vote of 544,788-for, 796,869-against. As a result, Chapter 98, Laws of 1995 did not become law.

Referendum Measure 48, 1995 Voters’ Pamphlet



REFERENDUM
MEASURE 48

PASSED BY THE LEGISLATURE AND ORDERED
REFERRED BY PETITION
CHAPTER 98, LAWS OF 1995

Note: The ballot title was written by the court. The explanatory statement was written by the Attorney General as required by law. The complete text of Referendum Measure 48 begins on page 20.
Vote cast by the 1995 Legislature on final passage:
HOUSE: Yeas, 69; Nays 27; Absent, 0; Excused, 2.
SENATE: Yeas, 28; Nays, 20; Absent 0; Excused, 1.

Official Ballot Title:

The Washington State Legislature has passed a law that restricts land-use regulations and expands governments’ liability to pay for reduced property values of land or improvements thereon caused by certain regulations for public benefit. Should this law be APPROVED or REJECTED?

Statement for

Excessive government regulations cost each taxpayer more than \$6,000 each year. You can help change that by approving Referendum 48 which makes government weigh the cost before passing new regulations.

Your vote to approve Referendum 48 means that local and state government will be limited in their ability to take private property away from individuals.

This law requires government to: (1) State the reason they want to take private property; (2) Determine the cost of new regulations; (3) Identify alternatives to achieving the regulatory goal; (4) Take the least burdensome alternative; and, (5) If government takes land and sets it aside for public use (such as to protect wetlands, wildlife habitat or buffer zones), it requires them to follow the Constitution and compensate landowners for land that is taken.

PROPERTY OWNERS HAVE A RIGHT TO FAIR
COMPENSATION WHEN GOVERNMENT
REGULATIONS REDUCE THE VALUE OF
THEIR PROPERTY.

Opponents of Referendum 48 want to repeal Washington State’s existing private property rights law. The state Legislature held a public hearing on this law, thoroughly debated it and passed it overwhelmingly in both houses with the strong support of both Democrats and Republicans. This legislation is clearly in step with the public’s desire to limit runaway government regulations.

WHEN ENVIRONMENTAL PROTECTION IS NEEDED,
EVERYONE SHOULD PAY FOR IT, NOT JUST THE
FAMILY WHO OWNS THE LAND.

Your vote to approve Referendum 48 means that you support balance and fairness and oppose burdensome

government regulations that unfairly reduce the value of private property. Your vote upholds our country’s constitutional principles.

Rebuttal of Statement against

Opponents claim to support private property rights, but for years they — and the environmental community — have stopped the legislature from fairly balancing property rights against land use restrictions.

R-48 will not increase litigation, or prove costly, *unless* regulatory agencies pass new regulations to take even more private property for public benefits, i.e., wetlands, wildlife habitat and buffer zones. R-48 does *not* impact local zoning.

Approve Referendum 48 and protect your private property and water rights.

Voters Pamphlet Statement Prepared by:

DAN WOOD, Democratic Party Leader, Public Involvement Activist, Hoquiam; DAN SWECKER, Republican State Senator, Fish Farmer, Centralia; STEVE APPEL, Washington State Farm Bureau President, Farmer, Dusty.

Advisory Committee: BERTHA GRONBERG, retired Public School Teacher, Small Tree Farmer, Montesano; JIM CROSBY, Labor Union Leader, Pulp and Paper Workers, Tacoma; DALE FOREMAN, House Majority Leader, Orchardist, Attorney, Wenatchee; ELAINE EDWARDS, Small Business Owner, NFIB Member, Spokane; SID SNYDER, Senator, Democratic Caucus Chair, Long Beach.

The law as it now exists:

Both the federal and state constitutions require state and local governments to pay just compensation if they take private property for public use. Currently the government is required to compensate a property owner in two situations. First, when a government seeks to use private property for a public building, highway, or some other purpose, it must pay the property owner the value of the property taken. Second, when government regulations deprive a private property owner of fundamental property rights, the courts will find that a "taking" has occurred and will require compensation. Fundamental property rights include the right to possess the property and exclude other people from it, the right to dispose of the property, and the right to some reasonable use.

Under current law, governments may regulate the uses of private property for the public health, safety, and welfare. Such regulations do not constitute "takings" or require compensation unless they deprive property owners of fundamental rights. Courts may invalidate unduly oppressive

regulations which are found to be unreasonable or not to further a legitimate governmental purpose. Courts have not required compensation where government regulations limit some uses of a property, or restrict development on a portion of the property, but leave the owner with economically productive uses for the remainder. Compensation may be required if a government imposes conditions on property development if the conditions are not roughly proportional to the impact created by the proposed development.

State and local governments are required to evaluate their proposed administrative actions to avoid unconstitutional "takings," but are not currently required to produce a formal written analysis of the effect of a proposed regulation on private property.

The effect of Referendum

Measure 48, if approved into law:

The measure is intended to provide remedies to property owners in addition to any existing constitutional rights.

(continued on page 14)

Statement against

If Referendum 48 passes, taxes will go up, government will grow, red tape will increase and there will be years of costly court battles.

That's why thousands of concerned Washingtonians, including the League of Women Voters, People for Fair Taxes, seniors and conservationists urge you to vote "NO" on Referendum 48, the "Takings" Initiative.

"TAKINGS" MEANS TAXPAYERS GET TAKEN

Experts and newspaper editors across the state say the "Takings" Initiative could cost Washington's taxpayers billions of dollars in studies, bureaucracy and lawsuits.

"TAKINGS" WILL CREATE NEW GOVERNMENT RED TAPE AND BUREAUCRACY

48 mandates new exhaustive, expensive government studies for every existing and future rule and safeguard at the local and state level that affects land use.

"TAKINGS" WILL CREATE ENDLESS, COSTLY COURT BATTLES

The "Takings" Initiative will result in years of expensive lawsuits and litigation.

READ REFERENDUM 48

Its backers downplay its cost to taxpayers, but the "Takings" Initiative speaks for itself: • You, the taxpayer, would be *required to pay* for costly, time consuming studies and new government red tape *whenever* a local community limits land use in the public interest (Section 3). • You, the taxpayer, would be *required* to pay developers and others *anytime* the public regulates land use that

results in any devaluation, even for basic zoning and building codes (Section 4).

"Takings" not only makes taxpayers pay for common-sense restraints on land, but on water as well—jeopardizing safe, quality communities.

We support our constitutionally guaranteed property rights. But everyone's against wasteful government, endless litigation and taxpayer payoffs to developers. This extreme "Takings" Initiative doesn't solve problems. It creates them.

Reject 48. It's the developer's dream. It's the taxpayer's nightmare.

For more information, call (206) 223-3728.

Rebuttal of Statement for

Don't be misled. Trust your own reading of Referendum 48. It won't solve a thing. Instead: • Taxpayers would pay for new, expensive government bureaucracy. • Taxpayers pay for years of costly lawsuits. • Taxpayers pay for huge payoffs to developers. • Taxpayers pay for reduced quality of life in our communities. 48 means developers profit. Taxpayers lose.

Existing law says our property rights are constitutionally guaranteed. *You* must protect your pocketbook and Washington's quality of life. **Reject 48.**

Voters Pamphlet Statement Prepared by:

KAREN VERRILL, President, League of Women Voters of Washington; MARY MARGARET HAUGEN, State Senator, Camano Island; EARL TILLY, Mayor, City of Wenatchee.

Advisory Committee: MICHAEL McGOVERN, President, Washington State Council of Fire Fighters; RICK BENDER, President, Washington State Labor Council; KATHY FLETCHER, Executive Director, People for Puget Sound; LIZ PIRIENI, People for Fair Taxes; GENE LUX, Puget Sound Council of Senior Citizens.

Further Sources:

George, Kathy, "Property Initiative Passes in the Senate," *Seattle Post-Intelligencer*, April, 19, 1995

Postman, David and Jonathan Martin, "Senate Joins Revolt Over Property Rights," *Seattle Times*, April 19, 1995

"Property Rights Issue Makes Fall Ballot," *Columbian*, August 2, 1995

Postman, David, "Voters Turn Down Property-Rights Measure--Not Much Sign of a Grass-Roots Movement," *Seattle Times*, November 8, 1995

Taylor, Rob, "The Voters Soundly Reject R-48," *Seattle Post-Intelligencer*, November 8, 1995

"Property Rights Battle Now Shifts to Legislature," *Columbian*, November 9, 1995